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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: STATE OF OREGON,

U.S.C.A. No. 23-70127

STATE OF OREGON,

PETITIONER'S MOTION FOR
EXTENSION OF TIME TO FILE
PETITION FOR PANEL REHEARING
OR REHEARING EN BANC

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON,
EUGENE,

Respondent,

PAUL JULIAN MANEY; GARY
CLIFT; GEORGE W. NULPH;
THERON D. HALL; DAVID HART;
SHERYL LYNN SUBLET; FELISHIA
RAMIREZ, personal representative for
the Estate of Juan Tristan, individually,
on behalf of a class of other similarly
situated,

Plaintiffs-Real Parties in Interest,

PATRICK ALLEN,

Defendant-Real Party in Interest.

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PETITION FOR PANEL REHEARING OR REHEARING EN BANC
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Pursuant to Federal Rules of Appellate Procedure 40(a)(1) and 26(b), as well as Ninth Circuit Rule 31-2.2(b), Petitioner State of Oregon moves for a 30-day extension of time until February 22, 2024, to file any petition for panel rehearing or rehearing en banc. The Real-Parties-in-Interest–Plaintiffs oppose this motion for an extension of time and intend to file a response.

Currently, a petition for panel rehearing or for rehearing en banc is due on January 23, 2024. Under Federal Rule of Appellate Procedure 40(a)(1), a petition for panel rehearing is due 14 days after entry of judgment. Likewise, a petition for rehearing en banc must be filed “within the time prescribed by Rule 40 for filing a petition for rehearing.” Fed. R. App. P. 35(c). In this case, the panel issued its opinion and judgment on January 9, 2024. Koch Decl. ¶ 2.

However, the Court can extend the due date for filing a rehearing petition for good cause. Fed. R. App. P. 26(b), 40(a)(1). Here, good cause is shown because undersigned counsel needs additional time to draft and file a petition due to competing, time-sensitive deadlines in other matters. Primarily, undersigned counsel is the sole line appellate attorney in the state case of *Arnold v. Kotek*, No. 22CV41008 (Harney Cty. Cir. Ct.). The trial court in that matter signed its final judgment on January 8, 2024, permanently enjoining Measure 114, a ballot initiative that Oregon voters approved in the November

2022 general election to enact statewide firearm-safety regulations. Counsel was an embed on the trial team for a six-day bench trial and currently is working on emergency appellate briefing to challenge the permanent injunction in the Oregon Court of Appeals. The state's public-safety interests in the case are substantial. Koch Decl. ¶ 3.

In addition, undersigned counsel is the sole line appellate attorney in this matter as well. In that role, undersigned counsel has been responsible for knowing the record in this case, which is extensive. Plaintiffs filed their first complaint in April 2020, and the district court docket currently encompasses 570 entries, many of them voluminous. The stakes of this appeal also are substantial. The State of Oregon's mandamus petition presented the question of whether and when a federal court can order the deposition of a state's governor over official state decisions made during a global pandemic. This case thus raises constitutional concerns that implicate both separation-of-powers and federalism principles. Koch Decl. ¶ 4.

Given the above time constraints, the quality of the State of Oregon's rehearing petition would suffer absent a time extension. Koch Decl. ¶ 5. Petitioner is aware that this appeal concerns a deposition for a trial that is currently scheduled to begin in summer 2024. At the same time, there are

inherent uncertainties in whether the trial will proceed as scheduled, how long this Court will take to consider the State of Oregon's rehearing petition, and how long the U.S. Supreme Court may take to consider a possible petition for a writ of certiorari. As such, Petitioner has endeavored to request the minimum amount of time necessary to draft and file an adequate rehearing petition commensurate with the constitutional principles at stake.

This motion for an extension of time is made in good faith and not for the purpose of delay. Koch Decl. ¶ 5. Additionally, a 30-day extension should provide Petitioner with sufficient time to prepare and file its rehearing petition. Koch Decl. ¶ 5.

For the above reasons, Petitioner moves for an extension of 30 days to file a petition for panel rehearing or rehearing on en banc, up to and including February 22, 2024.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General
BENJAMIN GUTMAN
Solicitor General

/s/ Robert A. Koch
ROBERT A. KOCH
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Attorneys for Petitioner
State of Oregon

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IN THE UNITED STATES COURT OF APPEALS
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STATE OF OREGON,

DECLARATION OF ROBERT KOCH

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON,
EUGENE,

Respondent,

PAUL JULIAN MANEY; GARY
CLIFT; GEORGE W. NULPH;
THERON D. HALL; DAVID HART;
SHERYL LYNN SUBLET; FELISHIA
RAMIREZ, personal representative for
the Estate of Juan Tristan, individually,
on behalf of a class of other similarly
situated,

Plaintiffs-Real Parties in Interest,

PATRICK ALLEN,

Defendant-Real Party in Interest.

Page 1 - DECLARATION OF ROBERT KOCH
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I, Robert A. Koch, declare and say:

1. I am an attorney at law licensed to practice in the State of Oregon and before the Ninth Circuit Court of Appeals. I am a Senior Assistant Attorney General for the State of Oregon. I also am the lead attorney representing Petitioner State of Oregon in this litigation.

2. A panel of this Court issued an opinion on the merits in *In re State of Oregon*, No. 23-70127, on January 9, 2024. Petitioner's petition for panel rehearing or rehearing en banc is currently due on January 23, 2024. Petitioner seeks a 30-day extension until February 22, 2024, in which to file a rehearing petition. This is the first request for a time extension.

3. This extension is requested due to competing, time-sensitive deadlines in other matters. Primarily, I am the sole line appellate attorney in the state case of *Arnold v. Kotek*, No. 22CV41008 (Harney Cty. Cir. Ct.). The trial court in that matter signed its final judgment on January 8, 2024, permanently enjoining Measure 114, a ballot initiative that Oregon voters approved in the November 2022 general election to enact statewide firearm-safety regulations. I was an embed on the trial team for a six-day bench trial and currently am working on emergency appellate briefing to challenge the permanent injunction in the Oregon Court of Appeals. The state's public-safety interests in the case are substantial.

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4. I am the sole line appellate attorney in this matter as well. In that role, I am responsible for knowing the record in this case, which is extensive. Plaintiffs filed their first complaint in April 2020, and the district court docket currently encompasses 570 entries, many of them voluminous. The stakes of this appeal also are substantial. The State of Oregon's mandamus petition presented the question of whether and when a federal court can order the deposition of a state's governor over official state decisions made during a global pandemic. This case thus raises constitutional concerns that implicate both separation-of-powers and federalism principles.

5. Given the above time constraints, the quality of the State of Oregon's rehearing petition would suffer absent a time extension. I have exercised due diligence and anticipate that Petitioner will file its rehearing petition within the time sought. The motion for an extension of time to file a rehearing petition is made in good faith and not for the purpose of delay.

6. I contacted Nadia Dahab, the lead attorney for Real-Parties-in-Interest–Plaintiffs. Plaintiffs oppose this motion and intend to file a response.

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DATED: January 10, 2024

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS
TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND
THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN
COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

/s/ Robert A. Koch

ROBERT A. KOCH
Assistant Attorney General
robert.a.koch@doj.state.or.us

Attorney for Petitioner
State of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2024, I directed the Petitioner's Motion for Extension of Time to File Petition for Panel Rehearing or Rehearing En Banc to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Robert A. Koch

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Assistant Attorney General
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State of Oregon